

TENTATIVE RULINGS

FOR: August 28, 2015

Please note that the court will strictly enforce filing deadlines for papers filed in support of and in opposition to law and motion matters, and may exercise its discretion to disregard a late filed paper, pursuant to California Rules of Court, rule 3.1300(d).

When calculating filing deadlines for papers to be filed within a certain number of court days from a hearing date, parties should exclude court holidays and court closure days.

Unlawful Detainer Cases - No tentative ruling will be posted because access to records is not permitted until 60 days after the complaint is filed. Parties **must appear** for all unlawful detainer demurrers, motions to quash, and other matters.

Court Reporting Services - Official court reporters are not provided by the Court in proceedings for which such services are not legally mandated. These proceedings include civil law and motion matters. If counsel wish to have the hearing on their civil law and motion matter reported, they must arrange for a private court reporter of their choosing to be present. The Napa County Bar Association has further information about local private court reporters. Go to <http://napacountybar.org/court-reporting-services/> for further information.

Attorneys or parties should confer with each other to avoid having more than one court reporter present for the same matter.

CIVIL LAW & MOTION CALENDAR – Hon. Elia Ortiz, Dept. C (Historic Courthouse)

County of Napa v. Wesner, D., et al.

26-59313

MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT AND/OR FOR AN AMENDED JUDGMENT REFLECTING THE AWARD OF RECISSIONARY DAMAGES AS AN OFFSET AGAINST COSTS AWARDED

TENTATIVE RULING: Defendants David D. Wesner (øDavidö), Janice L. Wesner (øJaniceö), and Don Wesner, Inc.ø (øDWIö) motion for an order to show cause re: contempt and/or for an amended judgment reflecting the award of recessionary damages as an offset against costs awarded is DENIED.

David previously moved to quash the February 7, 2014 Order for Entry of Costs on Judgment. (Jones Decl., Ex. E.) As part of that motion, the David argued that plaintiff County of Napa (the øCountyö) was øin contempt of court inasmuch as [the County] has never paid,

much less paid within the deadline set by the court, the sum of \$20,030.00 to the Wesners. (Id., Ex. E at p. 3:18-20.) On April 9, 2015, the Court (Hon. Stone) denied David's motion to quash, and specifically held that [David] Wesner has not demonstrated that the County is in contempt of any order. (Id., Ex. F at p. 2.) David now avers the County is in contempt for failing to pay the restitutionary damages. Despite the title of the motion, David is attempting to have this Court reconsider the April 9, 2015 Order. David, however, failed to file a timely motion for reconsideration under Code of Civil Procedure section 1008. Thus, David's attempt to circumvent the procedural time-bar with the current motion is improper.

As for Janice and DWI, they fail to comply with the statutory requirements for commencing a contempt proceeding. A contempt proceeding is commenced by the filing of an affidavit with charging allegations since the affidavit frames the issues to be tried. (Code Civ. Proc., § 1211; *Reliable Enterprises, Inc. v. Super. Ct.* (1984) 158 Cal.App.3d 604, 616.) The filing of a sufficient affidavit is a jurisdictional prerequisite to a contempt proceeding. (*In re Koehler* (2010) 181 Cal.App.4th 1153, 1169.) To the extent the Schmid declaration can be considered an affidavit with charging allegations, it falls well short of meeting the jurisdictional prerequisite to allow this court to sign an OSC re: Contempt and to set the date and time for a hearing. (Code Civ. Proc., § 1212.)

Even if the Court considered the motion, along with the request for an amended judgment, it fails. Janice and DWI contend the County is in contempt for failing to pay the Court ordered \$20,030 in restitutionary damages. The County maintains in its opposition that under Code of Civil Procedure section 666 and *Hughes Tool Co. v. Max Hinrichs Seed Co.* (1980) 112 Cal.App.3d 194 it may offset the \$20,030 in restitutionary damages against the judgment to which the County is entitled. The moving parties do not respond to this authority in their reply, and therefore, concede it is meritorious. Instead, the moving parties merely conclude that the County cannot unilaterally decide to disregard a court order and engage in self-help by taking an offset. (Reply at p. 2:18-22.) No authority is cited to support this position. If the whole situation is so Kafkaesque, then surely authority could have been raised to counter the County's argument. (Id. at p. 2:26; see *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199 [perfunctory assertion unsupported with legal argument or authority deemed without foundation and rejected]; Cal. Rules of Court, rule 3.1113(a)-(b).)

PROBATE CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Estate of Nicholas J. D'Ambrosio

26-66984

PETITION FOR COURT ORDER TRANSFERRING TRUST ASSET TO TRUST

TENTATIVE RULING: GRANT Petition.

**PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal
Courts Bldg.-1111 Third St.)**

Estate of Debra R. Rempp

26-66605

SPOUSAL PROPERTY PETITION

TENTATIVE RULING: GRANT Petition.